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FISCAL IMPACT STATEMENT

LS 6515

BILL NUMBER: HB 1098

NOTE PREPARED: Dec 30, 2008

BILL AMENDED:

SUBJECT: Illegal Immigrant Matters.

FIRST AUTHOR: Rep. Tincher

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Indiana State Police (ISP):* This bill requires the Superintendent of the State Police Department to negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws.

Office of the Attorney General (AG): This bill prohibits an employer from knowingly employing, after June 30, 2010, an unauthorized alien. The bill authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; and (2) notify United States Immigration and Customs Enforcement and the Department of Labor under certain conditions. This bill also makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the Attorney General.

Department of Labor (DOL): This bill also authorizes DOL to initiate administrative proceedings against an employer for knowingly employing an unauthorized alien. The bill prohibits DOL from initiating an administrative proceeding against an employer that verifies the employment authorization of an employed individual through the pilot program.

Employment Provisions: It prohibits an employer from knowingly employing, after June 30, 2010, an unauthorized alien. The bill also requires employers to verify the employment eligibility of an employee through the federal employment verification pilot program. This bill establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements.

Safe Haven Policies: This bill prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual.

Contracting Provision: This bill prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. It also allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

Department of Workforce Development (DWD): This bill requires the Department of Workforce Development to verify the lawful presence of certain individuals to determine the individual's eligibility for unemployment benefits through the SAVE program.

Effective Date: July 1, 2009; July 1, 2010.

Explanation of State Expenditures: *Indiana State Police:* Under the bill, the ISP would experience an increase in administrative expenditures to apply for the program, provide officer training, and enforce the provisions of the program. State expenditures would depend on the number of officers trained and additional number of persons incarcerated for a federal immigration or customs law violation. Currently, when a State Police officer makes an arrest, the offender can be held in a state correctional facility. Increases in state detention expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where pilot program-trained officers take identified undocumented aliens. Actual increases in expenditures are indeterminable.

Additionally, officers trained under the pilot program may have a responsibility to report criminal unauthorized aliens to the U.S. Department of Homeland Security or U.S. Immigration and Customs Enforcement (ICE) for deportation. If criminal undocumented aliens are deported or held temporarily for deportation hearings, then the state may not experience the full financial burden of detaining offenders. State expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Office of the Attorney General: [Note: The provisions affecting the Office of the Attorney General have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011.] The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or ICE. Consequently, the bill would potentially place several additional administrative responsibilities on the Attorney General.

This bill allows the AG to investigate complaints made against employers who are suspected of employing unauthorized aliens. The AG reports that it is expected that there would be a large volume of complaints filed with their office that would be diligently investigated. The AG estimates that the provisions of this bill will require at least a minimum appropriation of \$250,000 per fiscal year in order to provide salary and benefits for one staff attorney, one investigator, and one complaint analyst along with associated expenses and overhead costs.

Department of Labor: [Note: The provisions affecting the Department of Labor (DOL) have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011.] This bill authorizes DOL to initiate proceedings against employers whom the Attorney General determines has illegally employed unauthorized aliens. DOL reports that in order to initiate proceedings against violating employers, additional resources will be required to employ an adequate number of administrative law judges (ALJ) to hear and decide unauthorized alien employment cases. DOL currently has no vacant positions, so in order to hear and

decide unauthorized alien employment cases, the DOL estimates requiring a court reporter and other administrative expenses. DOL reports a cost of approximately \$60,000 per ALJ and approximately \$40,000 per court reporter. However, the necessary number of ALJs and court reporters is indeterminable given the unknown caseload the legislation will create. Additionally, DOL was unable to provide a per year cost estimate for administrative expenses because of unknown variables involving caseload. Expenses will depend on the implementation decisions of DOL administrators.

Contracting Provision: This legislation affects public employers as well as state contracting agencies by requiring that a contractor or subcontractor not employ unauthorized aliens as a condition of entering into a contract with a state agency or political subdivision. As a result, contractors will most likely be required to maintain or provide evidence regarding citizenship of their employees. In order to ensure compliance, contractors will either use the E-Verify system or the SAVE program to apply for a contract award. Requiring contracted employers to use verification systems may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or amounts paid by contractors. Increases in contracting expenses to the state are indeterminable.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure that all employees hired after the effective date are processed through the system. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Department of Workforce Development: The bill requires DWD to verify the lawful presence of individuals who apply for unemployment benefits using the SAVE program. Under current law, unauthorized aliens are not entitled to receive unemployment benefits. The bill may effectively decrease expenses paid from the Unemployment Insurance Benefit Fund to the extent unauthorized aliens no longer receive the benefits. The state may not experience a decrease in unemployment benefit expenses provided these benefits are redistributed to other individuals that might not have received benefits otherwise.

The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. [DWD reverted \$128,000 to the General Fund at the end of FY 2008.]

SAVE Program Fee Information: Fees are charged to entities that request verification with the SAVE program. Effective October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically, with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form.

Background Information: Over the current biennium, the ISP is authorized to receive approximately \$20.8 M in federal funds for various programs, including Homeland Security programs. According to the Pew Hispanic Center, it is estimated there are 100,000 undocumented migrants in Indiana as of 2006.

The Indiana Department of Corrections (DOC) reports the following costs for detaining unauthorized aliens

for SFY 2008.

State Fiscal Year	Average Daily Population of Unauthorized Aliens	Per Diem	Cost Per Day	Cost Per Year
2008	475	\$52.61	\$24,989.75	\$9,121,258.75

Explanation of State Revenues: Under the State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund. The state of Indiana received \$871,000 in FFY 2008 from the SCAAP Program.

Penalty Provision: [Note: The provisions affecting criminal penalties have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011.] The bill also creates a Class B misdemeanor for filing a false or frivolous complaint with the Attorney General. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: When a State Police officer makes an arrest, the offender is held in the place of detention within the jurisdiction of the arrest. The place of detention within the jurisdiction can include local jails and prisons. Local detention facilities may incur additional expenses if pilot program-trained officers take identified undocumented aliens for holding in local facilities. Actual increases in local expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested individual, and where pilot program-trained officers take identified undocumented aliens. The actual increase in expenditures is indeterminable.

Officers trained under the pilot program may report criminal unauthorized aliens to the U.S. Department of Homeland Security or ICE for deportation. If this is the case and criminal undocumented aliens are either deported or temporarily held for deportation hearings, then local detention facilities may not experience the full financial burden of detaining offenders for the duration of their sentence if convicted of misdemeanor offenses. Local expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Political Subdivision Application: This bill also impacts the contracting of work for local units of government. The same cost increases for contracting may be experienced as discussed in the *Explanation of State Expenditures*. Actual increases to local expenditures is indeterminable.

Penalty Provision: A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: Under the SCAAP program, a portion of the costs for incarcerating or detaining undocumented criminal aliens will be reimbursed to local detention facilities provided detained individuals qualify under program guidelines. The actual amount that local detention facilities will receive is indeterminable, but will depend on qualifying expenses and criminal convictions of incarcerated undocumented criminal aliens.

Penalty Provision: [Note: The provisions affecting criminal penalties have an effective date of July 1, 2010. Any fiscal impact would not begin to occur until FY 2011.] If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

Background Information: The counties that received payments from the SCAAP program in FFY 2008 and the total amounts received are shown in Table D.

Table A: 2008 County SCAAP Awards.	
County	Amount Received
Allen	\$22,220
Grant	\$4,375
Blackford	\$1,733
Hamilton	\$31,615
Noble	\$10,825
Johnson	\$4,071
Hendricks	\$9,557
Cass	\$15,808
Porter	\$1,491
Marion	\$94,637
Total	\$196,332

State Agencies Affected: All state agencies.

Local Agencies Affected: All local units.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; John Ruckelshaus, DWD.

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